CASE NOS. 87-1622, 87-1697 AND 87-1710

IN THE

SUPREME COURT

OF THE

UNITED STATES

OCTOBER TERM, 1987

PHILLIP BRENDALE, Petitioner,

v.

CONFEDERATED TRIBES AND BANDS OF THE YAKIMA INDIAN NATION, et al., Respondents.

STANLEY WILKINSON, Petitioner,

v.

CONFEDERATED TRIBES AND BANDS OF THE YAKIMA INDIAN NATION, Respondent.

COUNTY OF YAKIMA, et al., Petitioners,

v.

CONFEDERATED TRIBES AND BANDS OF THE YAKIMA INDIAN NATION, Respondent.

BRIEF OF THE GOVERNING COUNCIL OF THE PINOLEVILLE INDIAN COMMUNITY IN SUPPORT OF THE CONFEDERATED TRIBES AND BANDS OF THE YAKIMA INDIAN NATION

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INTRODUCTION

The Governing Council of the Pinoleville Indian Community submits this brief in support of the Confederated Tribes and Bands of the Yakima Indian Nation. Pursuant to Rule 36, the Governing Council submits with this brief letters from counsel for Petitioners Wilkinson, Yakima County and Brendale as well as the Yakima Indian Nation which consent to the filing of this brief.

SUMMARY OF ARGUMENT

According to the prior decisions of this Court, to determine whether an Indian tribe can exercise civil regulatory authority over a non-Indian owner of reservation fee land, a court must carefully review the existence of tribal sovereignty by reference to relevant statutes, Executive Branch policy and administrative or judicial decisions.

If these materials fail to demonstrate a divestiture of tribal sovereignty, and the non-Indian activity threatens to have a

direct effect on core tribal interests, the tribe can civilly regulate that activity. If tribal interests in regulating the activity outweigh county interests, the tribal regulation will pre-empt inconsistent county regulations.

The Court of Appeals properly applied these principles in this case.

Comprehensive tribal zoning of all reservation land is not inconsistent with the Indian tribes' dependent status. The General Allotment Act and similar laws did not divest tribes of this authority.

Comprehensive zoning is an essential element of tribal self-government and necessarily affects core tribal interests.

In every county throughout the country cities comprehensively zone within their boundaries, leaving counties to zone the unincorporated areas. Comprehensive tribal zoning within reservation boundaries fits this national pattern.

INTEREST OF AMICUS CURIAE

A. Factual background.

Between 1983 and 1986 the Pinoleville Indian Community was restored as a federally recognized Indian Tribe and the Pinoleville Rancheria[1] as a federally recognized reservation.[2] The 99 acres comprising the reservation were originally purchased by the United States in 1911 pursuant to appropria-

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1. The rancheria is located in Mendocino County, California. Mendocino County is a rural county located approximately 100 miles north of San Francisco in Northern California. The reservation is less than a mile north of the City of Ukiah. It is bordered on the north by Ackerman Creek which is a tributary of the Russian River, and on the south by its sole access road, Pinoleville Drive.

2. The restoration resulted from final judgments entered in Hardwick v. U.S., No C-79-1710 SW (N.D. Cal. 1979) against the United States on December 22, 1983 and March 5, 1986, and against Mendocino County on November 18, 1985. The judgments resulted from stipulations with the parties, approved by the court following a hearing preceded by notice mailed to potential class members and published in the local newspaper. See Pinoleville Indian Community v. Mendocino County, 684 F. Supp. 1042, 1044 (N.D. Cal. 1988).

tions acts passed in 1908. Prior to its restoration the reservation had been terminated under the California Rancheria Act, Act of August 18, 1958, Pub. L. 85-671, 72 Stat. 619, as amended by the Act of August 11, 1964, 78 Stat. 390 [hereafter, "the Rancheria Act"].

As part of its termination the reservation was subdivided into 19 parcels. Deeds to these parcels were conveyed in fee simple to Indians from the reservation.[3] Subsequent parcel splits approved by Mendocino County and conveyances by Indian owners have resulted in the creation of 29 parcels. Of these parcels 14, or 43% of the acreage, remain in Indian ownership. The Indian parcels are scattered throughout the reserva-

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3. For a further description of the termination process under the Rancheria Act see Duncan v. Andrus, 517 F. Supp. 1 (N.D. Cal. 1977); Smith v. United States, 515 F. Supp. 56 (N.D. Cal. 1978); Duncan v. United States, 667 F. 2d 36 (Ct. Cls. 1981), cert. denied 463 U.S. 1228 (1983).

tion.

Zoning began in the unincorporated areas of Mendocino County in 1956, before the reservation was terminated in the early 1960's. Prior to 1979, when the law suit which ultimately restored the reservation was filed, Mendocino County had zoned the reservation lands for agricultural uses. In 1982, while the law suit was pending, the county substantially revised its general plan and zoning ordinance, re-zoning the reservation industrial. See, Camp v. Mendocino County, 123 Cal. App. 3d 334 (1981). Residential uses are not allowed in an industrial zone in Mendocino County, because industrial uses are generally regarded as incompatible with residential use.

In May 1987, a non-member Indian of the reservation applied to the county for a permit to locate a redimix concrete plant and an asphalt batch plant on land located in the virtual middle of the reservation within the

100 year flood plain of Ackerman Creek. Indian owned homes border the parcel and no fence or other obstruction separates the parcels. Pinoleville Drive, a narrow, two lane road, provides the only access to the parcel. Trucks entering or leaving the parcel must pass homes owned by tribal members, some of which are occupied by elderly tribal members. Others are occupied by families with preschool age children.

When it learned of this application, the Governing Council of the Pinoleville Indian Community, formed in March 1985, adopted an ordinance imposing a one-year moratorium on new industrial uses of reservation property. The ordinance was intended to allow the Governing Council time to develop a comprehensive land use plan for the reservation that would harmonize continued residential and agricultural uses of reservation land with some commercial and limited industrial uses. The ordinance was adopted only after

the Governing Council conducted noticed public hearings. The moratorium did not prevent agricultural, residential or commercial uses of reservation land.

The Governing Council also opposed the permit application in hearings before the county zoning administrator and Board of Supervisors. During the hearings the Governing Council argued that the county was required to prepare an Environmental Impact Report under state law before approving the application. The Governing Council's environmental expert had determined that the proposed plants would create vast increases in heavy truck traffic, noise, dust and air pollution and threatened the continued use of Ackerman Creek as a source of fish and water for members of the Pinoleville Indian Community. Pinoleville Indian Community v. Mendocino County, supra, 684 F. Supp. at 1045.

In addition, the Governing Council argued that under the circumstances confront-

ing the Pinoleville Indian Community it had the authority to pass the moratorium ordinance and county approval would violate the ordinance. The county nevertheless approved the application without requiring an Environmental Impact Report. See Pinoleville Indian Community v. Mendocino County, supra, 684 F. Supp. at 1044. In so doing the county found that the industrial plants as approved could not have any significant impact on the environment. The county based this finding, in part, on the industrial zoning for the reservation.

The county reasoned that heavy truck traffic, noise, dust and air and water pollution necessarily accompany industrial development. The county equated the existing zoning of the reservation with the existing environmental conditions on the reservation. The Governing Council pointed out that the industrial zoning classification was inherently incompatible with its efforts to re-

store the reservation as a residential community for its members. The Council argued that over time industrial use of non-Indian property would effectively force tribal members to abandon residential use of their property. Eventually, the conflict between tribal and county land use policies would cause a de facto termination of the Pinoleville Indian Community, even as the tribe struggled to recover from the de jure, though invalid, termination attempted by the federal government.

After the county approved the plants, the Governing Council filed suit in the Federal District Court for the Northern District of California, inter alia, to enjoin the county and the property owner from violating its ordinance. Pinoleville Indian Community v. Mendocino County, supra, 684 F. Supp 1042. On March 19, 1988, the court granted the Governing Council a preliminary injunction against the property owner. In

granting the injunction the court relied primarily on this Court's decision in Montana v. United States, 450 U.S. 544 (1981), and the Court of Appeals decision in Confederated Tribes and Bands of the Yakima Indian Nation v. Whiteside, 828 F. 2d 529 (9th Cir. 1987). Id.

Subsequent to the issuance of the preliminary injunction, the Governing Council approached the county with the suggestion that the parties attempt to resolve the litigation by adopting compatible land use policies. As a result the parties, including the affected property owner, entered into a stipulation staying further proceedings for a one year period, during which the Governing Council and the county will attempt to adopt identical, or, at least, compatible land use policies governing both fee and trust lands on the reservation. A true and correct copy of the stipulation is attached hereto as Appendix 1. Under Montana if the parties adopt

compatible policies, the county zoning will apply to non-Indian fee owners on the reservation and tribal zoning will apply to trust lands.

B. Statement of Interest.

The Governing Council believes that the Yakima decision properly applied the principles articulated in Montana and the other decisions discussed below. As the Governing Council has so recently learned, the consistent application of those principles is absolutely essential in preserving the right of reservation Indians to make their own laws and be ruled by them. This is particularly true of the small reservations throughout California called "rancherias." Without this protection these communities will exist at the whim of the counties in which they are located.

So long as this Court's recently articulated principles of inherent tribal sovereignty continue to apply, Indian tribes

and counties in California can negotiate reasonable solutions to land use issues of mutual concern. With their limited resources, tribes and counties share a mutual interest in resolving these issues without the expense of litigation. The Governing Council's experience illustrates, however, that negotiations on a government-to-government basis will not occur unless the tribe's inherent sovereignty empowers it to regulate non-Indian use of fee land in appropriate circumstances.

ARGUMENT

I. THIS COURT HAS ARTICULATED STANDARDS FOR DECIDING WHEN AN INDIAN TRIBE CAN REGULATE NON-INDIAN USE OF FEE LAND LOCATED ON ITS RESERVATION.

In Oliphant v. Suquamish Indian Tribe, 435 U.S. 191 (1978), this Court announced that Indian tribes can be dispossessed of aspects of their sovereignty ". . . by implication as a necessary result of their dependent status . . . " as well as by specific

congressional enactment. Oliphant, of course, only specifically held that the Suquamish Tribe's dependent status necessarily deprived it of the sovereign authority to prosecute two non-Indians in tribal court for criminal violations.

In United States v. Wheeler, 435 U.S. 313 (1978), the Court clarified that Indian tribes retain the sovereignty to prosecute tribal members in tribal court for violations of tribal criminal laws. The Court clearly held that this authority derived from retained sovereignty and was not a grant of authority from Congress. Wheeler, supra, at 326, noted that:

> The areas in which such implicit divestiture of sovereignty has been held to have occurred are those involving the relations between an Indian tribe and non-members of the tribe.

In Montana v. United States, 450 U.S. 544, 564 (1981), the Court explained that the "implicit divestiture" doctrine does not

apply to a tribe's internal relations, such as the conduct of tribal members, questions of tribal membership, domestic relations among members, and rules of inheritance for members.

> But exercise of tribal power beyond what is necessary to protect tribal self-government or to control internal relations is inconsistent with the dependent status of tribes, and so cannot survive without express congressional delegation. [Citations omitted.] (Emphasis added.)

Based on these principles, Montana held that the Crow Tribe had no sovereign or delegated congressional authority to prohibit non-members from hunting on fee land located on the reservation. However, the Montana decision recognized that retained tribal sovereignty could still provide an Indian tribe with authority to regulate non-Indians who enter consensual relations with the tribe or when the conduct of non-Indians on fee lands within the reservation:

> . . . threatens or has some direct effect on the political integrity, the economic security, or the health

or welfare of the tribe. Id. at 566. The Court found that none of the conditions which might allow the Crow Tribe to regulate non-Indian hunting on fee land had been alleged in that case. The Court did provide some examples of allegations that might justify tribal regulation: 1) non-Indian hunting that imperils the subsistence or welfare of the tribe; 2) an abdication or abuse by the state of its responsibility to protect or manage wildlife; 3) state regulations that impair the right of tribal members to hunt or fish; or 4) less stringent regulation for on-reservation hunting or fishing than for similar activities elsewhere. Id., at 566, fn. 16. See also New Mexico v. Mescalero Apache Tribe, 462 U.S. 324, 331, fn. 12 (1983).

National Farmers Union Ins. Cos. v. Crow Tribe, 471 U.S. 845 (1985), has eliminated any suggestion that implicit divestiture has deprived Indian tribes of all authority to

regulate non-Indians not involved in consensual relations with tribes. In that case the Court specifically held that Oliphant does not automatically prevent an Indian tribal court from exercising civil subject-matter jurisdiction over non-Indians. That case involved a suit brought by a tribal member against a Montana school district based on an occurrence arising on land owned by the state within the boundaries of the reservation.

In remanding the case to the tribal court to determine its own jurisdiction the Court stated:

> Rather, the existence and extent of a tribal court's jurisdiction will require a careful examination of tribal sovereignty, the extent to which the sovereignty has been altered, divested, or diminished, as well as a detailed study of relevant statutes, Executive Branch policy as embodied in treaties and elsewhere, and administrative or judicial decisions. Id., at 855-856.

The issue now before this Court is whether the Yakima Indian Nation by act of Congress or by virtue of its dependent status

has been divested of the civil jurisdiction to establish comprehensive land use policies for its entire reservation encompassing all lands within reservation boundaries, including land owned in fee by non-Indians. That question must be answered using the analyses developed by this Court since Oliphant. That is, in the context of the Yakima Indian Nation establishing comprehensive land use policies for its reservation:

1. Does a careful review of tribal sovereignty and relevant statutes, Executive Branch policy and administrative or judicial decisions demonstrate a divestiture of jurisdiction over non-Indians; and

2. Will non-Indian use of fee land on the reservation threaten or have a direct effect on the political integrity, economic security, health or welfare of the tribe? In answering this question a court should examine whether the non-Indian's activities on his land imperil the subsistence or welfare

of the tribe. It should also examine existing state regulations to see whether 1) the state in its regulation has abdicated or abused its responsibility to regulate the non-Indian, 2) the non-Indian activities permitted under applicable state regulations interfere with Indian use of reservation resources, or 3) state regulations are applied on the reservation as rigorously as they are off the reservation.[4]

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4. This case appears to present the Court with a related although analytically distinct question, since both the Yakima Indian Nation and Yakima County seek to regulate the same non-Indian activities. As recently pointed out in New Mexico v. Mescalero Apache Tribe, supra, 462 U.S. at 334, fn. 16:

> The exercise of state authority [even over non-Indians] may also be barred by an independent barrier--inherent tribal sovereignty --if it "unlawfully infringe[s] 'on the right of reservation Indians to make their own laws and be ruled by them.'" White Mountain Apache Tribe v. Bracker, 448 U.S. 136, 142 (1980), quoting Williams v. Lee, 358 U.S. 217 (1959) [additional citations omitted.]

However, if, after applying the Montana analysis, the Court concludes that the tribe

II. THE COURT OF APPEAL PROPERLY APPLIED THESE STANDARDS. THIS COURT SHOULD AFFIRM ITS DECISION.

The Court of Appeal in the decision below followed this approach. It first determined by reference to relevant statutes and case law that the Yakima Nation had not been divested of its inherent authority to adopt comprehensive zoning laws for the entire reservation, including non-Indian owned fee lands. After determining that the tribe's authority had not been divested, it remanded the case to the district court to determine whether the balance of the interests favors tribal over county regulation.

The Court of Appeals' conclusions and disposition of this case were correct.

A. Congress has not divested Indian tribes of the authority to regulate non-Indian fee owned reservation land.

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has authority to regulate the non-Indian, it should follow without further analysis that application of the state law would interfere with the right of reservation Indians to make their own laws and be ruled by them.

Nothing in the relevant statutes, Executive branch policy or legislative or judicial decisions reveals an intent or understanding that the allotment of a reservation divests an Indian tribe of jurisdiction to regulate non-Indian use of fee owned property, where that use has a direct affect on the ability of the tribe to regulate its own internal affairs.

Congress did not understand that the General Allotment Act of 1887, 24 Stat 388, so divested tribes of this authority. On the contrary, this Court has repeatedly held that the policy of the Act " . . . was to continue the reservation system and the trust status of Indian lands, but to allot tracts to individual Indians for agriculture and grazing. When all the lands had been allotted and the trust expired, the reservation could be abolished." Mattz v. Arnett, 412 U.S. 481, 496 (1973).

This congressional understanding is fur-

ther buttressed by the definition of "Indian Country" in 18 U.S.C. §1151, which includes ". . . all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, . . . " Id., at 504. In Seymour v. Superintendent, 368 U.S. 351, 358 (1962) this Court specifically held that 18 U.S.C. §1151 includes within the definition of "Indian Country" reservation land patented in fee to a non-Indian. And in DeCoteau v. District Court, 420 U.S. 427, fn. 2, this Court further explained that:

> If the lands in question [non-Indian owned fee lands] are within a continuing "reservation," jurisdiction is in the tribe and the Federal Government "not withstanding the issuance of any patent, [such jurisdiction] including rights-of-way running through the reservation." 18 U.S.C. §1151(a) ... While §1151 is concerned, on its face, only with criminal jurisdiction, the court has recognized that it generally applies as well to questions of civil jurisdiction. [citations omitted.]

Of course, the allotment policy was

repudiated in the Indian Reorganization Act, Act of June 18, 1934, c. 576, 48 Stat. 987. However, if Congress intended the reservations to continue until the Allotment Act fulfilled its promise of assimilating the Indian residents into the dominant white society, the question remains whether Congress would have intended to deprive Indian tribes of any ability to regulate the non-Indians moving onto the reservations during the transition period. 18 U.S.C. §1151 and this Court's decisions interpreting that statute as well as numerous allotment acts demonstrate that it did not.

While it may defy common sense to suppose that Congress intended that such non-Indians automatically became subject to tribal jurisdiction, see Montana v. United States, supra, 450 U.S. at 560, fn 9, it is equally nonsensical to suppose that Congress intended to prevent tribes from regulating such non-Indian conduct, if regulation is

necessary to protect the tribe's ability to govern its own members; not only nonsensical but directly contrary to 18 U.S.C. §1151 and the decisions of this Court.

The Executive branch likewise has consistently understood that the allotting of land in severalty and the granting of citizenship has not destroyed the tribal relationship or the tribe's authority to regulate within the entire reservation notwithstanding the issuance of fee patents to Indians or non-Indians. See Opinions of the Solicitor, Dept. Of Interior, Vol 1, 55 I.D. 14 (Oct. 25, 1934), p. 445, 454, 466. See also Cohens, Handbook of Federal Indian Law (1982 Ed.) p. 254, citing Attorney General and Solicitor's Opinions dating from 1855.

Accordingly, the Montana test is fully compatible with the judicial and administrative interpretation of the effect of the General Allotment Act, and later acts patterned after the General Allotment Act. As

long as the reservations continue to exist the tribes resident thereon continue to exercise their inherent sovereignty within the limits established by this Court.

B. Comprehensive tribal land use regulation generally promotes the tribe's ability to make its own laws and be ruled by them.

The Court of Appeals was also correct in concluding that comprehensive zoning of its reservation necessarily affects a tribe's ability to govern its own members. The Governing Council's experience illustrates that if county land use policies are sufficiently hostile to the preservation of an Indian community, the power to zone non-Indian property may be necessary to protect the very existence of that community. But even where the conflicts are much less intense, comprehensive regulation within a defined geographical area is the sin qua non of zoning. See Euclid v. Ambler Realty Co., 272 U.S. 365 (1926).

Zoning within municipal boundaries in the United States began in the late 1800's. As early as 1899, Congress enacted height zones for Washington, D.C. 30 Stat. 922. In re Hang Kie 69 Cal. 149, 10 P. 327 (1886) upheld a City of Modesto, California, ordinance prohibiting public laundries except within a defined area of the city. New York City adopted the first modern, comprehensive zoning ordinance in 1916. See Lincoln Trust Co. v. Williams Bldg. Corp., 229 N.Y. 313, 128 N.E. 209 (1920). However, this Court did not uphold the constitutionality of comprehensive zoning until Euclid, supra, in 1926.

Comprehensiveness became the standard for modern zoning ordinances, when the Department of Commerce developed the Standard State Zoning Enabling Act (1926). Reprinted in 3 Ruthtcopf, The Law of Zoning and Planning 100 (3d Ed. 1967). All 50 states have since adopted such acts for municipalities,

but only 37 have enabled counties to zone. See Anderson & Roswig, Planning Zoning & Subdivision: A Summary of Statutory Law in the 50 States (1966); Cunningham, Land-Use Control - The State and Local Program, 50 Iowa L. Rev. 367, 369, n. 3 (1965).

Thus, comprehensive zoning within municipal boundaries has developed as the pattern in modern land use regulation and in 37 of 50 states counties zone within their unincorporated areas. Consequently, counties are accustomed to local general purpose governments within their boundaries developing separate zoning ordinances. Tribal zoning within entire reservations fits this historical development of zoning within the United States. County zoning of non-Indian fee owned lands within reservation boundaries, on the other hand, is contrary to this historical development, and frustrates the very purpose of comprehensive zoning.

As envisioned by the Standard Act a

zoning ordinance establishes zones or districts designated as usable primarily for defined purposes. The provisions in each zone had to be uniform throughout the zone. Standard Act §2. While variations within zones are allowed through the use of variances and use permits, the primary objective remains grouping compatible uses together.

If a county, for example, could zone every third parcel in each block of a city located in the county, certainly such a practice would undermine comprehensive municipal zoning. Similarly, if a county can reach into the heart of an Indian reservation and authorize uses on non-Indian fee lands that are incompatible with uses of adjacent tribal land authorized by a tribal zoning ordinance, the result will disrupt tribal zoning.[5]

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5. Many of the amici in support of the County of Yakima suggest that it violates due process or is, at least, unfair to subject non-Indians to any form of tribal regulation, because as non-members they cannot vote in

As the history of zoning in Yakima and Mendocino counties demonstrates, both tribal and county zoning are relatively recent developments. For this reason, non-Indian fee owners of reservation land cannot legitimately claim that tradition dictates the application of county zoning laws to their property. In the absence of any clear congressional intent to divest tribes of such authority, the Court of Appeal's remand to have the district court balance the respective interests of the federal and tribal governments, on the one side, and the county government, on the other, was the proper disposition.

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tribal elections and directly influence the content of these regulations. However, property owners are frequently subject to land use regulation by jurisdictions in which they are not voters. This circumstance is not unique to Indian reservations. The right to vote generally depends on residence, not property ownership. Accordingly, counties frequently regulate through zoning property owned by non-residents, who have no voice in county elections. Amici simply cannot tie the right to regulate to the right to vote.

Contrary to the arguments advanced by amici in support of Yakima County, the Court of Appeal's disposition properly respects this Court's pronouncements in Montana, supra. The decision simply recognizes that in the unique field of land use regulation a tribal decision to include non-Indian fee owned reservation land in a comprehensive tribal zoning ordinance rests upon the tribe's need to make its own laws and be ruled by them.

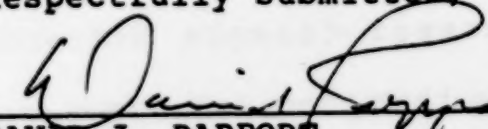
CONCLUSION

The Yakima Indian Nation retains its sovereign authority to zone its reservation. That authority necessarily extends to both trust and fee land located on the reservation. The exercise of that authority is not inconsistent with the Yakima Nation's dependent status. In fact, its ability to coordinate the use of reservation land lies at the heart of reservation self-government. Congress has not divested the tribe of this

authority.

As the Governing Council has learned county and tribal governments can accommodate their mutual interests in land use regulation through negotiation. But this will not happen unless this Court upholds the tribe's sovereign status and its authority to regulate fee lands in appropriate circumstances.

Respectfully submitted,



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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

Governing Council of Pinoleville Indian Community Plaintiff, v. Mendocino County, Board of Supervisors of Mendocino County; Ross Mayfield, Brent Mayfield, Defendants.	NO. C-87-4320 EFL STIPULATION AND ORDER

It is hereby stipulated by and between the parties to the above-entitled action through their respective attorneys of record as follows.

1. The existing preliminary injunction enjoining the Mayfield defendants from operating any concrete plant or any asphalt plant shall remain in effect for one (1) year, unless the Mayfield defendants obtain from plaintiff a hardship exemption as to either one or both of such plant operations.

2. Prior to July 1, 1988, the County shall consider adopting an interim ordinance effective immediately upon adoption that prohibits for a one-year period any issuance of any approval for

any industrial use within the existing boundaries of plaintiff's Rancheria. In the event the County fails to adopt such an ordinance prior to July 1, 1988, this Stipulation shall be null and void and of no further force or effect.

3. With the assistance of County plaintiff shall present to defendant County for implementation plaintiff's proposed amendment to that part of defendant County's General Plan which applies within the existing boundaries of plaintiff's Rancheria. Such proposed amendment shall be sufficiently detailed to allow defendant County to determine the appropriateness of compatible land use policies and zoning requirements within the existing boundaries of plaintiff's Rancheria. Defendant County and plaintiff shall cooperate to initiate and timely process such proposed amendment. Defendant County shall waive all fees associated with processing such amendment, including implementing zoning requirements.

4. Except for plaintiff's ordinance currently in effect strictly prohibiting new industrial uses within its boundaries, plaintiff shall adopt no zoning ordinance or any other land use regulation prior to or during the period of the County interim ordinance described in paragraph 2 of this Stipulation.

5. The parties stipulate to a stay of further proceedings in this court, pending defendant County's adoption of amendments to the County General Plan and implementing zoning laws satisfactory to plaintiff. Such stay of further proceedings shall remain in effect for a one-year period commencing July 1, 1988, or until the above-referenced County General Plan Amendment is adopted, whichever occurs first.

6. Issues raised in the instant complaint as to the effect of the stipulated judgment in Hardwick v. United States et al., No. C-79-1710 SW (N.D.Cal. 1979), and plaintiff's CEQA claims shall be reserved for further proceedings in this court.

7. If the County adopts the interim ordinance described in paragraph 2 of the stipulation, plaintiff shall waive its claims to attorney's fees incurred to date and to civil penalties for past violations under its Ordinance No. 2.

8. If the County adopts the interim ordinance described in paragraph 2 of this Stipulation, defendant County shall pay plaintiff its costs of litigation incurred as of the date of this Stipulation which plaintiff estimates at this time to equal the sum of $1,330.71, including expert witness fees. County shall pay said costs within thirty (30) days after plaintiff submits its cost bill to the County.

9. If the stay of further proceedings is terminated by the County's adoption of amendments to the County General Plan satisfactory to plaintiff, the parties agree as follows:

(a) Plaintiff shall dismiss Mendocino County from the pending litigation;

(b) Defendant County and defendant Mayfields shall dismiss any pending appeal of the instant preliminary injunction.

(c) Plaintiff shall waive any claim for attorney's fees incurred subsequent to the date of this Stipulation, reserving the right to claim such fees if the County fails to adopt the above referenced General Plan Amendment and implementing zoning requirements.

(d) The Mayfields shall stipulate to comply with the Tribal

land use plan, provided said plan allows the Mayfields to continue uses to the extent the Tribe has authorized said uses under the hardship exemption provisions of Ordinance No. 2 in effect before adoption of said plan.

The parties reserve the right to request an additional stay if at the end of the one-year period they believe completion of a satisfactory General Plan Amendment will occur within a reasonable time.

DATED: 6/6/88

MENDOCINO COUNTY
H. PETER KLEIN, County Counsel

BY: _____
YVES A. HEBERT
Deputy County Counsel
Attorneys for Defendants
County of Mendocino and
Board of Supervisors of
County of Mendocino

DATED: 6-6-88

GOVERNING COUNCIL OF PINOLEVILLE INDIAN COMMUNITY

BY: _____
DAVID J. RAPPORT
Attorney for Plaintiff

DATED: 6-7-88

ROSS AND BRENT MAYFIELD

BY: _____
NANCY BIGGINS
Attorney for Defendants
Ross Mayfield and
Brent Mayfield

ORDER

Having read the foregoing Stipulation and good cause appearing therefor,

IT IS SO ORDERED.

DATED: JUN 2 1 1988

_____
JUDGE of the United States
District Court

CERTIFICATE OF SERVICE

I, David Rapport, being first duly sworn deposes and says:

1. I am a member of the Bar of this Court and represent the Governing Council of the Pinoleville Indian Community.

2. I have served copies of Brief of the Governing Council of the Pinoleville Indian Community in Support of the Confederated Tribes and Bands of the Yakima Indian Nation on all parties of record herein as follows:

On November 4, 1988, I deposited a true copy of said document in a sealed envelope with the correct postage thereon fully prepared in the United States Post Office mailbox at Ukiah, California, addressed to each attorney of record herein as follows:

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Michael Mirande
Bogle & Gates
The Bank of California Center
Seattle, WA 98164

DAVID J. RAPPORT

ACKNOWLEDGMENT

County of Mendocino)
) ss.
State of California)

On NOVEMBER 4, 1988, before me, the undersigned a Notary Public in and for said State, personally appeared DAVID J. RAPPORT known to me to be the person whose name is subscribed to the within instrument, and severally acknowledged to me that he executed the same.

Witness my hand and official seal.

Notary Public in and for said State

OFFICIAL SEAL
KATHY BRADISH
Notary Public-California
MENDOCINO COUNTY
My Comm. Exp. Sep. 10, 1991